

Delhi HC confirmed sec. 68 additions as assessee failed to prove identity and financial strength of creditors

Summary – The High Court of Delhi in a recent case of Bikram Singh, (the Assessee) held that where AO made addition to assessee's income under section 68 in respect of loan taken from various parties, since assessee failed to prove that any of those creditors had financial strength to lend such huge sums of money to assessee, that too without any collateral security, without interest and without a loan agreement, impugned addition deserved to be confirmed

Facts

- During assessment proceedings, the Assessing Officer made addition to assessee's income under section 68 in respect of loans/advances received from eight persons. On the ground that the assessee was unable to establish the identity, creditworthiness and genuineness of the said persons and transactions
- The Commissioner (Appeals) confirmed said addition.
- The Tribunal set aside additions in respect of four creditors and remanded matter back to Assessing Officer for disposal afresh in respect of other creditors.
- On revenue's appeal:

Held

- A review of the documents filed on record, as also findings of the Commissioner (Appeals) and the Assessing Officer, reveal that the genuineness of the transactions and the creditworthiness of the creditors is seriously in issue and the findings of the Tribunal are contrary to the settled law.
- In the case of 'A' the documents that were submitted by the assessee, were a letter of confirmation, a letter issued by the Bank, the bank statement for the period from 1-4-2008 to 31-3-2011, a copy of the cheque for Rs. 50,00,000/-, the voter ID Card and a copy of letter of the Land Acquisition Officer. A perusal of the bank statement reveals that the account of 'A' was opened by a cash deposit of Rs.1,000/- and there are several sums running into lakhs withdrawn in cash. There is no explanation, whatsoever, as to why a sum of Rs.50,00,000/- would be given as loan/advance to the assessee in the absence of any loan agreement either specifying the interest charged on the loan or any security offered in respect of the loan.
- In the statement of 'A', there was nothing to justify the giving of such a loan to the assessee. The Commissioner (Appeals) had noticed that the monthly income of 'A' was in the range of Rs.2,000/- to Rs.2,500/-. He could not produce any documentary evidence to explain the entries in his bank statement. In the case of 'A' there was nothing on record to displace the findings of the Commissioner (Appeals) and his financial strength was clearly not established. Thus, the deletion by

the Tribunal of the entry of Rs.50,00,000/- is contrary to law and the findings of the Commissioner (Appeals) *qua* this transaction deserve to be upheld.

- The assessee claimed that 'C' had given an amount of Rs.1,10,00,000/- to the assessee and the documents, in respect of this transaction, are a letter of confirmation, copy of the bank statement, PAN card, voter ID Card, ledger account for the period from 1-4-2010 to 31-3-2011, ITR for assessment year 2011-12 and the order of the assessment for assessment year 2011-12. The documents, filed by the assessee in respect of 'C', do not inspire any confidence to support a transaction to the tune of Rs.1,10,00,000/-, inasmuch as, the bank statement reveals that while the account was opened with a deposit of Rs.500/-, huge amounts of cash deposits to the tune of Rs.50 Lakhs, Rs.30 Lakhs, Rs.20 Lakhs and Rs.10 Lakhs have been made into the said account. The tax computation attached to the return does not reveal any unsecured loans. In fact, the documents filed by 'C' establish that the transaction was not even disclosed to the revenue authorities by him.
- Thus, the Assessing Officer and the Commissioner (Appeals) came to the correct conclusion that this amount deserves to be added to the income of the assessee. The genuineness of this transaction has not been established by the assessee. The Tribunal has ignored the evidence on record and did not even examine the genuineness of the transaction or the financial strength of the creditor as required in law. Merely because the transaction was by payments through cheque, the Tribunal presumes them to be genuine. A creditor who opens a bank account with just Rs. 500/-, depositing huge sums of cash into the account and then lending a sum of Rs. 1,10,00,000/- to the assessee, without any agreement, interest payment or security, is 'fantastic' and 'incredible' to say the least. The Tribunal ignored vital and telltale evidence which showed that the transaction was far from being genuine. The assessee had clearly failed to discharge the onus cast upon him *qua* this creditor.
- Insofar as 'R' is concerned, first, there is a doubt as to his actual identity. The bank statement produced for the period from 1-4-2008 to 31-3-2011 shows deposits and withdrawals in cash. He also tried to change his explanation. While in his oral statement, he stated that the amount of Rs.10,00,000/- was given to 'B' out of the proceeds of sale of land, he later claimed that the amounts of Rs.18,48,750/- and Rs.5,86,000/- came from his sister, 'V'. The identity and genuineness is in severe doubt in the case of 'R' and the fact, that his annual income was between Rs.1.75 Lakhs to Rs.1.8 Lakhs and he also does not even file an ITR and does not have a PAN number, clearly points to the irrefutable conclusion that the entire transaction was not genuine and the identity of 'R' was also dubious.
- Insofar as 'S' is concerned, she is the wife of the assessee and from her statement, it is clear that she has no knowledge of any of the transactions being conducted through her bank account. Her letter of confirmation was filed by the assessee along with a copy of her PAN card, the bank statement, a copy of passport and ITR for assessment year 2011-12. The Assessing Officer had rightly concluded that her sources of income were not established and her ITR reveals the gross total income of Rs.1,69,144/-. The amount shown as loan/advance to the assessee of Rs.98,00,000/- is totally lacking any support from the documents placed on record by the assessee. The mere fact that these

were cheque payments does not necessarily mean that these had to be held as being genuine. The Tribunal grossly erred in holding that, just because 'S' was the wife of the assessee and her PAN card was filed, the genuineness of the transaction was established. There was no analysis by the Tribunal as to her financial strength to lend such a huge amount to the assessee.

- The Assessing Officer and the Commissioner (Appeals) rightly concluded that in respect of all the transactions, the identity, creditworthiness and genuineness are in doubt.
- In fact, the assessee was unable to discharge the onus cast on him in respect of any of the four creditors and the transactions thereof and hence the onus did not shift to the revenue.
- An analysis of the above facts shows that none of those four individuals had the financial strength to lend such huge sums of money to the assessee, that too without any collateral security, without interest and without a loan agreement. The mere establishing of their identity and the fact that the amounts had been transferred through cheque payments, did not by itself mean that the transactions were genuine. The Assessing Officer and the Commissioner (Appeals) have rightly held that the identity, creditworthiness and the genuineness are all in doubt. Moreover, that these amounts have been advanced to the assessee without any explanation as to their relationship with the assessee, the reason for the payment of such huge amounts, as also whether any repayments have, in fact, been made.
- There are contradictions in the explanation given by the assessee and the statements recorded by these four individuals, which are irreconcilable. For example, in the case of 'R', he had initially stated that he had given Rs.10,00,000/- out of the proceeds of sale of the land but thereafter it was claimed by him that the money had come from her sister. Such contradictions clearly render all these transactions dubious. The Tribunal could not have, merely because the payments were through cheques, held that the transactions were genuine. The Tribunal erred in simply accepting the explanation of the assessee *qua* the four transactions.
- The Tribunal has ignored all the contradictions and has ignored glaring circumstances such as 'A', not even being an assessee, in holding that the transactions are genuine and creditworthiness is established. The explanation for advancing the loans is clearly contradictory in respect of two of the creditors. To accept such explanations would in effect result in turning a blind eye as has been done by the Tribunal, to transactions which clearly lacked *bona fides*. Thus, the Tribunal's order is erroneous and contrary to law and is accordingly, set aside.
- In the result, revenue's appeal is allowed.